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IN THE

Supreme Court of the United States

No. 72-792

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants,
against
DOLORES DUBLINO, *et al.*,
Appellees.

No. 72-802

ONONDAGA COUNTY DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Appellants,
against
DOLORES DUBLINO, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

REPLY BRIEF FOR APPELLANTS NEW YORK STATE DEPARTMENTS OF SOCIAL SERVICES AND LABOR AND THEIR COMMISSIONERS

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REPLY BRIEF ON BEHALF OF STATE APPELLANTS

This brief is submitted on behalf of the New York State Department of Social Services and Labor and their Commissioners in reply to the brief of the appellees.

Summary of Argument

It is submitted that appellants have misinterpreted both the terms of the Social Security Act and the intention of Congress in enacting it. From an examination of subsequent amendments and even the most recent amendments to the Federal Act (the Talmadge Amendments) and recent comments of members of Congress, it is apparent that Congress did not intend to preempt the field of work requirements or to prevent the States from adopting their own requirements.

Furthermore, the legislative history of the Social Security Act clearly demonstrates that Congress intended to provide the States with considerable latitude in setting eligibility requirements for public assistance and that among the eligibility requirements so contemplated were State work requirements.

ARGUMENT

I

The appellees in their brief have misconstrued both the purpose and scope of New York State's work referral program and the Federal Social Security Act.

This point is directed in reply to specific statements in the brief of the appellees which appellants contend have misconstrued the purpose and scope of the work referral program of the New York Social Services Law and of the Federal Social Security Act in order to reach their desired conclusion that there is an irreconcilable conflict between the two statutes.

Initially, it must be observed that one of the main sources of the disagreement between the parties to this action is a

difference in outlook in relation to the statutes involved and the ends sought to be obtained. We submit that the statutes must be kept in perspective in order to properly evaluate the contentions of the parties.

Congress has never *specifically* stated that the Work Incentive Program (WIN) is to preempt State work statutes or programs, nor has it stated specifically that those public assistance recipients who are not enrolled in WIN may not be required by the States to participate in any State work or training programs.

Furthermore, it must be remembered that the State and local officials whose testimony is part of this record all agreed that under the New York work referral program *all* public assistance recipients who are eligible for WIN and for whom slots or funding is available are referred to and participate in the WIN Program and WIN procedures apply to them. There are, however, recipients who are not so included, either because there is no WIN project in their area, by decision of the United States Secretary of Labor, or for whom no WIN position is available, because of inadequate funding by the Congress or inadequate allocation of positions by the Secretary of Labor, or because they are classes of recipients who are not required to participate in WIN. Those not included in WIN are within the work referral requirements of section 131(4) of the New York Social Services Law, and State procedures apply to them. Thus, differences in procedures between WIN and State social services regulations are immaterial and irrelevant to the sole question raised on this appeal, that is, whether the Federal Act has preempted the State's power to act in this field. Consequently, the extensive discussion in the appellees' brief concerning differences in procedures has no application to the issues in this appeal.

The difference in perspective between the parties to this case is apparent in a consideration of appellees' arguments concerning the 1971 amendments to the Social Security Act (the so-called Talmadge Amendments). On page 8 of their brief, appellees point to the penalty provisions of the amendment, pursuant to which States are penalized by a reduction of Federal assistance for failure to certify to the WIN program at least 15% of the average number of registrants in each year (42 U. S. C., § 603[c]). This 15% provision, appellees contend, demonstrates a Congressional intent to occupy the entire field of work-training programs. On the other hand, it must be noted that Congress recognized that 85% of the *registrants* (as opposed to recipients) might be excluded from participation in WIN for some reason. We submit that Congress could not have intended that those 85% must therefore be excluded from any kind of work requirement, if the State is willing to develop its own work referral program.

Appellees also contend that the placing of registered mothers in the lowest priority category for WIN placement was intended to "protect" them from compulsory certification until all other categories had been placed (appellees' brief, p. 8). This contention is directed toward an argument that the State's program, by establishing no such priority list, is harsh and burdensome as to ADC mothers and is in conflict with the Federal Act. Actually, neither the word "protect" or any synonym for it appear in the remarks of Senator Talmadge referred to in appellees' brief (117 Cong. Rec. 20569 [Dec. 4, 1971]). His statements may just as easily be taken to mean that the priorities are geared to assuring that the Federal program any money are used to assure that those public assistance recipients best able to work, most obligated to do so and who can be placed in employment quickest and with least supportive cost, are put to work first.

WIN's objective, like that of New York's work referral program, is employment. The 1971 amendments emphasized that factor and all the procedural steps provided under that program are geared to the end of employment alone. If a recipient is job-ready at the time he is registered for the WIN program and if, while waiting for a WIN position to open up, a job can be developed for him under a State program, then WIN's objective has also been fulfilled.

Appellees emphasize the development of an employability plan for each WIN participant, as if it were some unique asset of the WIN program. Actually it must be remembered that those plans are developed by the staff of the State Employment Service, the same agency which places recipients under the State work referral program, and that the manpower services of that office are also available and provided, when necessary, to persons referred under the State's program.

Congress, in attempting to establish nationwide guidelines, set relatively rigid categories of persons who are subject to compulsory referral to WIN. The State's program, operating on a smaller scale, can be more flexible in reaching the same objectives. For example, WIN exempts a mother of a child under 6 years of age from registering; the State's program exempts mothers of children of any age for whom day care is not available or who are needed in the home to care for children. Thus, under the State's program a mother having no children under 6 may be exempted from referral on the basis that her presence in the home is necessary to the physical or psychological well-being of her children. Both statutes consider the same factor, although from different angles—that is, the need of a mother in the home. Thus, there is in reality no conflict between the Federal and State statutes in this regard.

Consequently, appellees incorrectly state that under the State's program a mother is exempt only if day care is not available (p. 20).

Similarly, appellees have over-simplified the physical incapacity exemption, by stating that only those are exempt whose illness or incapacity prevents them from "performing services", implying, of course, harassment of the sick and disabled. Yet it is perfectly obvious that many people have chronic illnesses which do not keep them from gainful employment. A person with chronic sinus inflammation, for example, is able to work in almost any employment; a person with arthritis may be employable in many occupations without discomfort. Under the State's program, such people would be considered employable in work which they are physically able to perform, as they would be under the WIN program.

The priorities established in the Talmadge Amendments are, we submit, a clear Congressional demonstration that the Federal Act is not intended to be all inclusive. If Congress had intended that the WIN program would be capable of placing all public assistance recipients, no scale of priorities for registration and placement would have been necessary. The very setting of priorities demonstrates the limited scope of the WIN program. Senator Talmadge's remarks, quoted at page 21 of appellees' brief, demonstrate the basic purpose for establishing priorities, as well as the penalty provisions under the 1971 amendments. Some of the States simply were not referring sufficient numbers of people to WIN. The amendments were intended to require the States to participate to the fullest extent possible under the Act. While the figures for placements demonstrate that New York has been so participating in the past, it is also apparent that the WIN program's scope has not been

all inclusive in the past and, we submit, is still not under the 1971 amendments.

One final comment concerning the dichotomy in the views taken of the WIN program *vis-a-vis* the State's work referral program is apparent in appellees' quotation from the District Court decision in the *Woolfolk* case (325 F. Supp. 1162 [1971], affd. 456 F. 2d 652, cert. den. ____ U. S. ___), cited at page 32 of appellees' brief. Appellants in the instant case have taken the position that the exemption from registration for the WIN program of persons "too remote" to participate did not apply to persons residing in areas where no WIN project has been established, and, thus, even under an inclusive interpretation of the WIN statute, State programs as to those recipients should be permissible. The Disctrict Court's opinion in *Woolfolk*, as quoted above by appellees, also apparently construes the remoteness provision to refer only to recipients residing in an area where a WIN project has been established, the Court holding that a determination as to remoteness required an individual determination as to each recipient rather than as to a certain area. Individual determinations would not be necessary if the remoteness provision applied to areas where no WIN project was established.

Appellees have, we submit, misconstrued both the scope and intent of the Federal Social Security Act. In so doing, they read into it an intention to preempt the field of work referral, an intention which actually is not present in the statute, nor was it present in the minds of the Congressmen who enacted it. In the Congressional Record for October 17, 1972, specific statements appear by the chairmen of the appropriate Congressional committees disclaiming any intent to prohibit State work referral programs. Senator Long was chairman of the Finance Committee of the Senate

when the WIN statutes were enacted. As to the intention of the Senate, he stated (S 18493):

> "It was never our intention to prevent a State from requiring recipients to do something for their money if they were employable. It seems to me reasonable that they should be asked to do something for the money. It would be far better to do something for the money than nothing at all."

In the House, Congressman Carey of New York is reported as stating that it was his understanding "that Congress intended, through the WIN program, merely to assist the States in the critical area of guiding able-bodied welfare recipients toward self-sufficiency—and not to supersede individual State programs designed to achieve the same end." Wilbur Mills, chairman of the House Ways and Means Committee, specifically agreed that that was the proper interpretation of the intent of the Congress in enacting the WIN program (H 10212).

We submit, therefore, that the proper interpretation of the Federal Social Security Act provisions is, as we have contended, that the act does not by its terms intend to preempt the entire field of work referral for ADC recipients nor did Congress intend such preemption by its enactment of the WIN program.

II

New York's work referral program does not constitute an additional condition of eligibility for public assistance. In any event, additional conditions of eligiblity not inconsistent with the Social Security Act are not prohibited by that Act.

Appellees contend that New York's work referral program creates an additional condition of eligibility and that such conditions are prohibited by the Social Security Act and the decisions of this Court. It is the State's position here that a work requirement does not constitute an additional condition of eligibility and that, in any event, since work requirements are consistent with the intent and purpose of the Social Security Act, they are neither specifically prohibited by that act nor did Congress intend that they be prohibited.

It is clear from an examination of the Social Security Act that a basic purpose of the ADC program has been to encourage work. The preamble clause to Title IV has, since 1962, explicitly set forth as a purpose of the program the aim of helping

> "parents or relatives to attain or retain capability for * * * maximum self-support and personal independence * * *" (42 U. S. C., § 601).

Moreover, it is patent that the capacity to work is related to the problem of the need of an individual for public assistance, and, therefore, that a work requirement *per se* would not be inconsistent with the purposes of the Act. Thus, income from earnings has been considered by the Department of Health, Education and Welfare to be an important potential source of income which the States may legitimately require the recipient to develop in accordance with the statutory mandate to explore and consider all

available resources. The Congress has itself recognized the importance and desirability of work as an element of the ADC program, as will be discussed in detail later in this brief.

We submit that the permissibility of work requirements is in no way inconsistent with 42 U. S. C., § 602(a)(10), which requires that a State ADC plan must provide that aid "shall be furnished with reasonable promptness to all eligible individuals". It is significant to note in this regard that the Department of Health, Education and Welfare, which administers the Social Security Act, takes the position that the term "eligibile individuals" means those persons eligible under the approved *State* plan, that State work requirements are not inconsistent with the Social Security Act, and that such requirements are permitted under the Act (see, *e. g.*, Brief of United States of America, *amicus curiae* herein and District Court Brief of HEW in *Woolfolk* v. *Brown, supra*). It is submitted that, this interpretation should be entitled to the weight and deference due the agency charged with the administration of the Act (*Lewis v. Martin*, 397 U. S. 552 [1970]; *Rosado* v. *Wyman*, 397 U. S. 397 [1969]).

In *King* v. *Smith* (392 U. S. 309 [1968]), this Court stated that 42 U. S. C., § 602(a)(9), (now 602(a)(10)) and 42 U. S. C. § 606(a) in combination "clearly require participating States to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible" (392 U. S., p. 317). The Court examined in detail the intended Congressional meaning of the term "parent" as used in 42 U. S. C., § 606 (a) and concluded that children deprived of the support or care of such a "parent" could not be denied ADC "on the transparent fiction that they have a substitute father." (392 U. S., p. 334) However, this Court did not there

specifically hold and we do not read *King* as establishing by implication the proposition that all children who come within the definition of "dependent child" under 42 U. S. C., § 606(a) must *ipso facto* be considered eligible for purposes of 42 U. S. C., § 602(a)(10). Section 606(a) establishes only a matching definition, setting forth the limits of Federal financial participation. Some States, for instance, make payments for all needy children, including those of the working poor, but Federal matching is available only with respect to the children who come within the terms of 42 U. S. C., § 606(a). Moreover, it is clear that the Congress, in enacting 606(a) and amending it from time to time, intended to leave many options to the States in covering groups of children, *e.g.*, in relation to age, school attendance, and relatives with whom the child is living. Thus, the State may make assistance payments to broader groups or narrower groups than are described in 606(a). In short, 606(a) and 602(a)(10) are not properly to be read as coextensive.

Similarly, 42 U. S. C., § 602(a)(10) does not stand for the proposition, as some would contend, that States cannot impose eligibility conditions other than those specifically authorized by the Social Security Act. Instead, the entire history and pattern of Title IV and the other public assistance titles of the Act show the opposite approach, namely, that if the State plan complies with all of the conditions specified by the Act, the Secretary of Health, Education and Welfare shall approve the plan, and the State may also include under the plan, and have approved by the Secretary, other eligibility conditions if they are not inconsistent with the purposes and provisions of the Act (see, *Wyman v. James*, 400 U. S. 309 [1971]). Work requirements are also an eligibilty condition which States may impose. There is nothing in the language or history

of 602(a)(10) to support the notion that it reverses what is otherwise obvious and inherent in the structure and provisions of the Act and the Federal-State relationship thereby created, or that it nullifies any option the States might otherwise have to impose work requirements.

This Court has rendered opinions in three cases ruling on the validity of State eligibility standards (*King* v. *Smith, supra; Townsend* v. *Swank,* 404 U. S. 282 [1971]; and *Carleson* v. *Remillard,* 406 U. S. 598 [1972]). Additionally, in the so-called NOLEO cases, this Court has summarily affirmed three District Court decisions involving NOLEO provisions (*Taylor* v. *Martin,* 330 F. Supp. 85 [N. D. Calif., 1971], affd. *sub nom. Carleson* v. *Taylor,* 404 U. S. 980; *Meyers* v. *Juras,* 327 F. Supp. 759 [D. Ore., 1971], affd. 404 U. S. 803, reh. den. 404 U. S. 961; and *Doe* v. *Swank,* 332 F. Supp. 61 [N. D. Ill., 1971], affd. *sub nom. Weaver* v. *Doe,* 404 U. S. 987).

In *Townsend,* discussing its prior holding in *King,* the Court stated (404 U. S., p. 286):

> "Thus, *King* v. *Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause."

The other ground of decision in *King* and *Townsend* is that a State eligibility standard must yield to the provisions of 42 U. S. C., § 602(a)(10) that aid be furnished "to all eligible individuals".

We shall demonstrate herein, however, that (A) neither the Social Security Act nor its legislative history foreclose the creation of State requirements for eligibility for ADC,

and (B) the provision of section 602(a)(10) that aid be furnished "to all eligible individuals" when read within the context of the Social Security Act means individuals "eligible" under State requirements, not Federal.

The legislative history of the Social Security Act of 1935 demonstrates that the States may set up eligibility requirements of their own. Section 602(a) sets forth the requirements of a State plan for aid and services to needy families with children. Section 602(b) then states the curious requirements that "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section except that he shall not approve any plan which imposes as a *condition of eligibility* • • •" certain residency requirements (emphasis added). If all of the standards of eligibility are contained in 602(a) and the States have no option to establish additional standards, the prohibition against certain residency requirements contained in subdivision (b) would be unnecessary. From the face of the statute, therefore, it appears that Congress did not intend to foreclose the States from imposing additional standards of eligibility.

The Social Security Act of 1935 itself dealt with residency requirements and the precursor of section 602(b) was a part of the original Act. As to that requirement, the report of the House Ways and Means Committee (No. 615 of 1935) stated:

> "(b) Liberality of residence requirement: No residence requirement shall be imposed which results in the denial of aid with respect to an otherwise eligible child, if the child was born in the State within the year, or has resided in the State for at least a year immediately preceding the application for aid. The State may be more lenient than this, if it wishes. *It may, furthermore, impose such other eligibility requirements—as to means, moral character, etc.—as it sees fit.* No State is required to give aid to nonresidents." (Emphasis added).

The Report of the Senate Finance Committee (Report No. 628 of 1935) was to the same effect. Clearly, therefore, the framers of the Social Security Act of 1935 thought that it was for the States to establish requirements of eligibility. In *King* v. *Smith, supra,* this Court recognized that the 1935 House and Senate Reports indicated "that States participating in AFDC were free to impose eligibility requirements relating to the 'moral character' of applicants" (392 U. S., p. 322) but held that the so-called "worthy person doctrine" no longer applied to contemporary conditions, and in *Shapiro* v. *Thompson* (394 U. S. 618 [1968]), this Court relied upon the "liberality of residence requirement" set forth in the House and Senate Committee Reports as support for its decision invalidating residency requirements in AFDC cases.

To the best of our knowledge, however, this Court has not dealt directly with the intent and meaning of the reports of the Senate and House Committees, quoted above, in their entirety. We submit that such an examination can only lead to the conclusion that Congress, at the time of the enactment of the Social Security Act, intended to permit the States to establish conditions of eligibility in addition to those prescribed in the Act and limited only by the express prohibition in 602(b).

The history of the Social Security Act since 1935 only serves to reinforce that conclusion.

Pursuant to 42 U. S. C., § 607, enacted in 1961, a State, at its option, was permitted to obtain Federal financial assistance under its ADC program for aid furnished to children who were needy because of the unemployment of a parent, as distinguished from the absence of a parent from the home. That section, as amended in 1962 (P. L. 87-543), provided that a State ADC plan which included

families with unemployed parents must provide for cooperative arrangements with the State public employment offices looking toward employment of such parents and must further provide that ADC will be denied to the family if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage which is offered through the State employment service or is otherwise offered by an employer, if the offer is determined by the social services agency, after notification by the employer, to be a bonafide offer of employment (42 U. S. C. § 607(b)(2)). The plan must further provide for cooperative arrangements with the State vocational education agency to encourage retraining of unemployed parents, and must provide for the denial of ADC to the family if, and for as long as, the unemployed parent refuses without good cause to undergo any such retraining (42 U. S. C. § 607(b)(3)).

Although with the unemployed parents legislation, the Congress clearly moved directly into the area of work requirements, no statutory provision or administrative interpretation prevented the States from setting their own standards for requiring work as a condition of eligibility. The latitude left to the States in formulating and administering work requirements under the ADC program was made clear in the Senate Report on the Unemployed Parents provision (No. 165, 87th Congress, 1st Sess. [1961], page 3):

> "Your committee's bill, as does the House-passed bill, requires that a State agency administering the expanded aid to dependent children program must enter into cooperative arrangements with the State agency administering the public employment offices looking toward the employment of the unemployed parents of the children receiving aid. The arrangements which the State public assistance agency will need to

have with the employment service must include provisions for appropriate registration for work and periodic registration of the unemployed parent of a child and for otherwise making maximum utilization of job placement services and other services and facilities of the employment office. The purpose of this provision is, so far as possible, to secure employment for the unemployed person in any jobs that may be available which there is not good cause for him to refuse, as determined by the State.

"Your committee believes that an unemployed individual whose family is receiving aid under this program should accept any reasonable offer of employment. Accordingly, the bill would require that a State plan include provisions to assure that aid is not provided if, and for as long as, the unemployed parent refuses without good cause to accept employment in which he is able to engage. Considerable latitude would be left to the State in determining the period during which assistance would be denied. It is not intended to permanently disqualify the family during subsequent periods when no offer of employment is available. The State would determine whether the parent had good cause for refusing an offer of employment.

"The State agency would have considerable latitude in determining what constitutes a bona fide offer of employment, but it is intended that aid be denied if an individual refuses a bona fide offer of employment which the State determines he should have accepted."

The enactment of the Unemployed Parents provision (ADC-U) was not considered by HEW to pre-empt the area of work requirements or to limit the States' latitude to impose work requirements on other ADC applicants or recipients. Even today, only about half the States have chosen to implement this provision, as amended, the ADC plans of the other States are unaffected by any Federal work requirement from this source. Even for those States which have implemented the ADC-U provision, the requirements of 42 U. S. C. § 607, although clearly setting

out conditions which the State plan must include, are located in a different part of the Social Security Act than the conditions specified in 602 and relate to a separable segment of the State's ADC program. Nevertheless, the Unemployed Parent provision established a precedent that a Congressionally imposed work requirement did not preempt the field, but rather exhibited Congressional concern that ADC applicants and recipients should obtain employment, where appropriate. The effect was to reinforce, rather than weaken, the States' options in imposing work requirements.

The Congress also specifically directed itself to the question of work as a condition of eligibility for ADC in legislation establishing the Community Work and Training Programs, first authorized by the Public Welfare Amendments of 1962 (P. L. 87-543, 42 U. S. C. § 609). That legislation provided for Federal sharing in State payments to ADC recipients in return for participation in the Community Work and Training Program. While not requiring that the States make work a condition of eligibility for ADC, the Federal legislation implicitly recognized the propriety of requiring work under the program as a State-imposed eligibility condition for ADC. See especially 42 U.S.C. § 609(a) (1) (G), which provided that:

> "aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for such refusal. * * *."

More specifically, the House Report on the legislation provided that (No. 1414, 87th Cong., 2nd Sess. [1962], p. 15):

> "If a State plan is approved, assistance could be denied if the individual refuses without good cause to take the work offered."

Here, too, the effect of the Congressional action was to reinforce the States' latitude in imposing work requirements not only in regard to the Community Work and Training programs but also in relation to private sector employment.

At the time of the 1967 amendments, there was an unbroken history since enactment of the Social Security Act of 1935 whereby States had the option of imposing work requirements as a condition of eligibility for ADC. The only Federal requirement of this type was explicity contained in 42 U. S. C. § 607 relating to unemployed parents. There was no Federal prohibition against imposition of such requirements by the States. Rather, the several factors already discussed pointed consistently to State discretion in this area. The general pattern and provisions of Title IV of the Social Security Act gave latitude to the States in the absence of express Federal limitation. Congressional enactments, far from prohibiting State-imposed work requirements, both explicity and implicity recognized the propriety of such provisions.

The 1967 amendments were thus enacted against the background that about 14 States imposed work requirements beyond those imposed on unemployed parents by the Congress. The validity of such requirements was also upheld judicially. In *Anderson* v. *Burson* (300 F. Supp. 401 [N. D. Ga., 1968]), plaintiffs attacked Georgia's work requirement applicable to ADC mothers and also its provision that full-time employment of the mother makes the family ineligible even though the earnings do not meet the family's need. The Court found for the plaintiffs on the full-time employment issue and for the State on the work requirement issue (300 F. Supp., p. 404):

> "That portion of the 'employable mother' regulation which provides that a mother must accept suitable employment, assuming adequate safeguards to the mother

and her children, such as the availability of adequate child care plans and other such limitations, does not violate any of the plaintiffs' constitutional or statutory rights, *there being no federally protected right of a mother to refuse employment while receiving assistance and remaining at home with her children.*" (Emphasis supplied.)

Under the Social Security Amendments of 1967 (P. L. 90-248), the Congress first established mandatory work requirements for ADC recipients as part of the general ADC program. It added, as one of the specific conditions for approval of the State plan and payment of Federal funds, the requirement that the State and local welfare agencies must provide for the prompt referral of appropriate recipients (and certain volunteers) to the Secretary of Labor for participation under the Work Incentive Program (42 U. S. C. § 602 (a)(19)(A)). The Act contains detailed provisions as to circumstances under which an individual is not appropriate for referral, the effect of participation in the WIN program on ADC payments, the sanctions to be imposed if a referred individual refuses without good cause to participate in the WIN program or to accept employment and other matters.

It is clear from both the provisions and history of the 1967 Amendments that Congress intended to emphasize more strongly than ever before the importance of employment as an essential element of a State public assistance program. Perhaps more importantly here, however, there is no provision which would indicate that Congress intended by this legislation to preempt the tremendously large field of employment for public assistance recipients or to attempt to provide a total substitute for State work programs and requirements.

The Work Incentive (WIN Program established under Title IV of the Act (42 U. S. C. § 630 *et seq.*) is an extensive, although far from all-inclusive, work program. That the Congress did not intend that the program be all-inclusive is evident from a number of factors. First, the Federal act clearly implies the limited scope of the program by specifying that the Secretary of Labor shall establish WIN programs.

> "in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children." (42 U. S. C. § 632(a).)

The statute further provides that:

> ". . . In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established." (42 U. S. C. § 632(a).)

Under a related provision, a person otherwise appropriate for referral shall not be referred if he is

> "so remote from any of the projects under the work incentive programs . . . that he cannot effectively participate under any of such programs." (42 U. S. C. § 602(a)(19)(A)(v).)

It is submitted that this language demonstrates that it was not contemplated by the Congress that the Work Incentive Program even though extensive in scope, would include within its purview the entire AFDC program. That the program is not all inclusive is demonstrated in appellants' main brief in that it exists in only 12 of New York's Social Services districts.

The obvious limitations in scope evident in the statutory language, when viewed in the light of the repeatedly expressed intent of Congress to curb the expansion of the welfare rolls at least in part by employment, would seem to lead inexorably to the conclusion that the Congress did not intend the WIN program to be exclusive of State work provisions.

In addition to establishment of the WIN Program and the State plan requirement that certain individuals be referred to the WIN program, the 1967 Social Security Amendments contained other provisions relating to work. The general purpose of helping parents and caretaker relatives to attain or retain capability for maximum self-support and personal support (42 U. S. C. § 601) was to be advanced by specific requirements of social service activities. The State ADC plan must provide for development and application of a program of family services for each parent or caretaker relative to assist such individual to attain or retain capability for self-support (42 U. S. C. § 602(a)(14)). More specifically, under 42 U. S. C. § 602(a)(15), the State ADC plan must provide

> "(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, with the objective of—
>
> "(i) assuring, to the maximum extent possible, that such relative, child, or individual will enter the labor force and accept employment so that they will become self-sufficient,
>
> "(B) for the implementation of such programs by—
>
> "(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child care services."

It is obvious that the services requirements in relation to work under 42 U. S. C. 602 (a)(14) and (15) apply to a

broader segment of the ADC population than the requirement of referral to the WIN Program under 42 U. S. C. 602 (a)(19). The assurance of child care services under 42 U. S. C. 602 (a)(15)(B)(i), above, to those referred to the WIN Program is only one of the work-related services to be furnished to *some* of the individuals to be affected by 42 U. S. C. 602 (a)(14) and (15).

Accordingly, the Federal regulations implementing 42 U. S. C. 602 (a)(15) require the States to provide an extensive range of work related services to all in the ADC caseload who might benefit therefrom (45 CFR 220.17).

> "(a) Child care services, including in-home and out-of-home services, must be available or provided to all persons referred to and enrolled in the Work Incentive Program *and to other persons for whom the agency has required training or employment.* Such care must be suitable for the individual child, and the parents must be involved and agree to the type of care to be provided. Such services must be maintained until the person is reasonably able to make other satisfactory child care arrangements." (Emphasis added.)

As a basis for the continued State option to impose work requirements, in addition to those under the WIN Program, as a condition of eligibility for ADC, perhaps the most telling aspect of the 1967 Amendments is the fact that the Congress did not change the basic pattern of Title IV of the Social Security Act. If the State ADC plan provides for referral of individuals to the WIN Program, and imposes penalties for refusal of referred individuals to participate in such a program or to accept employment, as provided in 42 U. S. C. § 602 (a)(19), and if the State plan provides for work-related services for the broader group of individuals covered under 42 U. S. C. § 602 (a)(15), the Secretary "shall approve" the plan. (42 U. S. C. § 602 (b)). The State has fulfilled the conditions specified

by the Social Security Act. There is nothing in the Act, and no indication of Congressional intent, that would preclude the State from imposing work requirements as a condition of eligibility in ADC.

Thus, the 1967 Amendments reflect an increased Congressional concern that ADC recipients should work if possible. The imposition of new statutory requirements on work and services only set a minimum which all States must observe. Beyond that, the States at their option may prescribe other requirements. At some point, perhaps, or in some respects, such State requirements might conflict with Federal requirements and, if so, they would not be acceptable. As a general proposition, however, the climate of the 1967 Amendments favored the latitude given to the States regarding work requirements beyond these under the WIN Program. To all of the pre-1967 factors, which remained unchanged,—the pattern of the Act, the purpose clause, the provisions on need and on consideration of income and resources—was added the evident Congressional preoccupation with work. In this vein, over 20 States impose work or training requirements in addition to those applicable to the WIN Program as a condition of eligibility for ADC.

Furthermore, the legislative history of the amendments to the Social Security Act of 1967 (P. L. 89-97, [1968], P. L. 90-248 and 1969 P. L. 91-41) shows the inability to discern a Congressional intention of pre-emption as regards the ADC provisions of the Social Security Act.

A provision of the 1967 amendments which found its way into law was former 42 U. S. C. § 603 (d), since repealed, which added a provision limiting Federal financing for the largest ADC category—where the parent is absent from the home—to the proportion of each State's total child population receiving ADC in that category.

Chairman Wilbur Mills of the House Ways and Means Committee, in his remarks during debate on that amendment, stated (Cong. Rec., August 17, 1967, p. 23055):

> "This provision, we believe, would give the States an additional incentive to make effective use of the constructive programs which the bill would establish. Moreover, this limitation on Federal matching will not prevent any deserving family from receiving aid payments. The States would not be free to keep any family off the rolls to keep within this limitation because there is a requirement in the law that requires equal treatment of recipients and uniform administration of a program within a State."

Chairman Mills, it is noted, relied on the provisions of the Act itself in expounding the effect upon the States of the "freeze". As to that freeze, the remarks of then Secretary of Health, Education and Welfare, John W. Gardner, inserted in the Congressional Record, show that he disagreed with Chairman Mills as to the effect of the freeze, for he stated:

> "Something we did not ask for and did get was the ceiling which the Committee placed on the AFDC program. The proportion of children on the rolls because of the absence or desertion of a parent would be frozen as of the proportion obtaining in January of this year. I will recommend to the Senate deletion of the provision.
>
> "Under the House amendment, the Federal Government would be foreclosed from sharing in the support of children whose condition is precisely the same as that of children already being assisted. *The States would be encouraged—virtually forced—to establish even more restrictive eligibility requirements,* or else to lower the already inadequate support being paid." (Emphasis added.)

The passage of time shows that the so-called "freeze" provisions were about to have some unintended effects.

The pendency of *Shapiro* v. *Thompson, supra,* concerning the residency requirements, and *King* v. *Smith, supra,* concerning the man-in-the-house requirements, meant that in the event the residency and man-in-the-house requirements were held invalid a considerable number of people would be added to the ADC rolls in the States for whom no Federal participation would be available under the freeze provisions. Thus, in 1969, the implementation of the freeze was postponed for one year (P. L. 90-364).

For purposes of clarity, we refer to the repeal of the freeze by Public Law 91-41 and to Senate Report No. 91-223 submitted in connection therewith, as well as the Conference Report No. 91330 (see 1969 United States Code Congressional and Administrative News, pp. 1051 through 1055, inclusive).

The Senate report is set out as Appendix A to this Brief. That Report sets out the history of the 1968 legislative action concerning the "freeze" and the reticence of the House conferees to repeal the limitation. Also contained in that Report is a provision contained in the 1968 litigation tying special provisions authorizing increases in ADC rolls to a decision by a Court of the United States on the issue of the validity "under the United States Constitution, of any law, rule, regulation, or policy of a State under which aid to families with dependent children is denied to individuals otherwise eligible therefor because of * * *" failure to meet duration of residency requirements or because of the relationship between a male individual and the mother of the child or children with respect to whom such aid is sought.

The Senate report also contains the rather remarkable statement that:

> "At the time the conferees acted, it was anticipated that the Supreme Court would soon rule on the duration of residence and man-in-the-house cases, and that the decisions, if they ruled out these eligibility requirements, would be based on constitutional grounds. However, only [the man-in-the-house case was decided] and that ruling was made on statutory rather than constitutional grounds."

It is at once apparent that the decision of this Court, grounded as it was upon the provisions of the Social Security Act and the Court's findings as to legislative intent, came as a complete surprise to the members of the Congress. See also as to the 1968 amendments, House Report No. 1014, 1968 United States Code Congressional and Administrative News, p. 2341 at 2361, 2362, the Conference Report No. 1523, *id.* p. 2373 at 2395 and 2396.

Senator George A. Smathers, Ranking Majority Member of the Senate Committee on Finance, in explaining the Conference Report on the 1968 extension of the freeze stated (1968 United States Code Congressional and Administrative News, p. 2428):

> "The limitation on aid to families with dependent children, known as the 'AFDC freeze' is postponed for 1 year to allow time for effective implementation of the work incentive program designed to guarantee training and jobs for appropriate AFDC recipients.
>
> "Equally important, the conference agreement makes special provision for adjusting the AFDC limitation in those States whose eligibility requirements are affected by court decisions. This is particularly appropriate in view of the recent Supreme Court decision striking down the so-called man-in-the-house rule."

See also Senator Smather's remarks at *id.*, p. 2409.

Where Congress has intended to impose limitations on eligibility, it has done so expressly. For example, when

the provisions of section 602(a)(15), relating to the furnishing of family planning services, were inserted in 1967, it was expressly stated that the acceptance of such services "shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan." See also section 602(a)(15), as amended, providing that acceptance of such services "shall not be a prerequisite to eligibility for or the receipt of any other service under the plan."

In 1971, the work incentive provisions of section 602(a)(19) were amended to provide an inclusion "that every individual, as a condition of eligibility for aid under this part, shall register for manpower services * * *." The earlier provisions of subdivision 19 had merely provided for the referral to the Secretary of Labor of an "appropriate" person. Registration was made a condition of eligibility because Congress was dissatisfied with the application by the States of standards of "appropriateness" (See remarks of Senator Talmadge, Congressional Record—Senate, December 4, 1971, p. 20569, and Chairman Mills, Congressional Record—House, December 14, 1971, p. 12450).

One final quote from the 1935 debate on the adoption of the Social Security Act is appropriate here. Congressman Vinson of Kentucky there stated (Cong. Record, April 17, 1935, p. 5897):

> "We have had many Federal grants in aid to States, but let me say to the House—and this is a statement that cannot be contradicted—that the powers under this bill that rest in the State are greater than those resting with the States in any other statue granting aid to States. Perhaps I should put it the other way around and say that under this bill there is less Federal power to be exercised in the administration of the act than in any grants-in-aid statutes on the books. We

made it a point to preserve the rights of the States. You will find that in the question of administration the selection, the tenure, the salary, all that went with personnel, is left to the States.

"There is no yardstick laid down in this bill by the Federal Government with respect to the aged who will get the benefits under title I. The States have that power; it is theirs under the Constitution of the United States. No effort was made to deprive them of it. One State may have one yardstick, and a second State may have another yardstick; only subject to the age limit of 65 or 70, up to 1940, the question of 5 years' residence within the States during the preceding 9 years, the last year of which must have been spent in the State immediately prior to time the application was made; and thirdly, that no citizen of the United States can be excluded from the provisions of the act."

We submit to this Court that the work requirement of the New York statute here at issue is not an additional condition of eligibility inconsistent with the purposes of the Social Security Act. Moreover, the intent of Congress has consistently been to provide great latitude to the States to establish additional conditions of eligibility supplementary to the purpose of the Social Security Act and State work requirements have always been considered as permissible supplementary conditions.

CONCLUSION

The judgment appealed from should be reversed and judgment granted holding the New York work rules constitutional and valid.

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